IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1462 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

A. D. MODY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1462 of 1990

MR MURALI N DEVNANI for Petitioner No. 1

MR RC KODEKAR AGP for Respondent No. 1

..... for Respondents No. 2-4

MS SEJAL K MANDAVIA for Respondent No. 5

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 25/01/2002

C.A.V. JUDGEMENT

1. The petitioner, serving as a Deputy Executive

Engineer at the relevant time under the respondent No.5, i.e. Gujarat Maritime Board, has filed this petition mainly for a direction to consider his case for promotion to the post of Executive Engineer with effect from an earlier date with consequential benefits as also for issuance of a writ of quo-warranto to set aside the appointment of the respondent No.2 on the post of Executive Engineer.

2. The petitioner was appointed as Junior Engineer (Mech.) on 1.4.1975 and promoted as Deputy Executive Engineer on 5.1.1980 when the respondent No.4 was also promoted. The respondent No.2 was initially appointed as Supervisor on 31.7.1970 and promoted as Deputy Executive Engineer on 9.10.1978. As the petitioner had become eligible for promotion earlier to the respondent No.2, he made several representations for granting an earlier deemed date of promotion.

2.1 On 20.1.1987, a provisional seniority list was published against which the petitioner filed his objection on 9.4.1987. The final seniority list came to be published on 21.12.1987 wherein the petitioner was shown at serial No.6 in the cadre of Deputy Executive Engineers. The objection of the petitioner against the final seniority list was that the respondent No.2 was shown at serial No.3 and the respondent No.4, who was promoted by a common order along with the petitioner, was also shown above the petitioner. Therefore, the petitioner again made representations to the Government pending which the respondent No.2 was further promoted to the post of Executive Engineer.

2.2 The petitioner has also alleged that the respondent No.2 was punished in 1988 by stoppage of two increments for a period of two years by an order dated 9.12.1988 and yet promoted to the post of Executive Engineer on the criteria of merits and efficiency. As against that, as averred by the petitioner, he had the record of spotless service and no enquiry was held against him and no penal order was passed by any authority during his service. By an amendment, it is further averred that despite sincere efforts to appear in professional examination held by the Department for junior engineers, he could not do so for want of permission and after his application for appearance being granted, he passed the examination on 9.3.1979. Thus, the claim for deemed promotion to the post of Deputy Executive Engineer on 1.4.1978 is sought to be made out with a claim to further promotion in preference to respondents Nos.2 to 4.

3. By an affidavit of its Deputy Secretary, the respondent No.5 has replied and denied the contentions of the petitioner. It is stated that the petitioner had passed the professional examination for Junior Engineers in 1979, before which the respondent No.2, namely, Shri Lakhani, was already promoted to the post of Deputy Executive Engineer and the petitioner had not challenged that promotion of Shri Lakhani on 31.7.1978. Respondent No.3 was also promoted to the post of Deputy Executive Engineer on 22.9.1979 before the petitioner. And although the respondent No.4, who joined as supervisor on 8.1.1971, was promoted on 5.1.1980 along with the petitioner, he had joined as Deputy Executive Engineer on 19.1.1980 whereas the petitioner had joined on 28.1.1980. Thus, in short, the placement of the respondent No.2 to 4 above the petitioner is sought to be explained and justified. It is further stated that in the provisional seniority list dated 20.1.1987, the respondents Nos.2 to 4 were shown above the petitioner and after considering the objection of the petitioner, final seniority list dated 16.10.1987 was published and the same was not challenged by the petitioner till the filing of the present petition in July 1990. It is also stated that the grievance of the petitioner that he was not allowed to appear in the professional examination before 1979 and that his representations in that regard made in 1980 and 1981 were also not decided within reasonable time were belated. As regards the subsequent promotion of the respondent No.2, it is averred that he was promoted by order dated 17.1.1990 on ad-hoc basis in the prevailing situation and after considering his record including his confidential record and the order of punishment dated 9.12.1988. As for the respondent's power to appoint the respondent No.2 as Executive Engineer, it is averred that the maximum pay-scale of Executive Engineer did not exceed Rs.2,000/and the Chairman was competent to take decision regarding his promotion under the provisions of the Gujarat Maritime Board Act, 1981. The petition is also resisted on the grounds of delay, laches and misjoinder of causes of action. The affidavit-in-reply as above is not followed by any rejoinder by the petitioner.

4. Against the above backdrop of facts, the contentions on behalf of the petitioner proceeded on the basis that the petitioner was entitled as a matter of right to promotion to the post of Deputy Executive Engineer with effect from 1.4.1978 on completion of three years as Junior Engineer. Rule 2 of the Deputy Engineer (Mechanical) Ports Organisation Recruitment Rules, 1977,

which provides for appointment to the post of Deputy Engineer (Mech.) in the Ports Organisation, was relied upon in support of that submission. The said Rule 2 reads as under:

"2. Appointment to the post of Deputy Engineer (Mechanical) in the Ports Organisation shall be made either-

(a) by promotion of a person of proved merit and efficiency from amongst the persons working in the subordinate service of Engineers viz. Junior Engineers in the Mechanical side in the Ports Organisation with about three years experience, supervisors in the Mechanical side in the Ports Organisation with about eight years experience and overseers in the Mechanical Branch in the Ports Organisation with about thirteen years experience or-

(b) by transfer of an officer from the cadre of Deputy Engineer (Mechanical) in the General State Service, Class-II of the Public Works Department, and who possesses a degree in Engineering of a recognised University, or

(c) by direct selection."

4.1 It is clear from the plain reading of the above provisions that promotion of a Junior Engineer to the post of Deputy Executive Engineer was dependent upon proved merit and efficiency, and three years of experience only made him eligible for being considered for promotion. In other words, completion of three years service as a Junior Engineer, ipso facto, did not confer any right to promotion. Therefore, there is no substance in the submission that no sooner the petitioner completed three years of service on 1.4.1978, he was entitled to promotion. The objection to the petitioner's promotion even when the respondent No.2 was promoted, i.e. in October 1978, is stated to be that the petitioner had not cleared the professional examination at that time; nor was any issue raised by the petitioner at that time. The petitioner has, at a belated stage even in the present proceedings and in the form of written submissions, sought to raise an issue of discrimination in the matter of allowing appearance in the departmental examination. Such plea cannot be entertained for the obvious reason

that neither the averments are made on affidavit nor has the respondent had the opportunity to respond.

4.1 The petitioner's grievance regarding fixing of his seniority below respondents Nos.2 to 4 is also misconceived and belated as indicated in the reply affidavit filed on behalf of the respondent No.5. The subsequent earlier promotion of respondent No.2 to the post of Executive Engineer can hardly be questioned by the petitioner when his claim for promotion to the post of Deputy Engineer before respondent No.2 could not be substantiated.

4.2 MAHARASHTRA ELECTRICITY BOARD v. DINKAR SADASHIV SANE [1993 (II) L.L.J. 353] and S.P.AGARWAL v. DELHI MUNICIPAL CORPORATION [1997 (I) L.L.J. 285] were cited on behalf of the petitioner in the written submissions, but it was not shown as to how the same were applicable in the facts of the present case. The respondent relied upon the judgment of the Supreme Court in P.S.SADASIVASWAMY v. STATE OF TAMIL NADU [AIR 1974 SC 2271] and particularly the observations therein as under:

> "2.....A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal...."

Reliance was also placed on the judgment of the Supreme Court in B.S.BAJWA v. STATE OF PUNJAB [(1998) 2 SCC

523], wherein it is observed as under:

> ".....It is well-settled that in service matters the question of seniority should not be reopened in such situations after a lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case in making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

5. In the facts of the present case, applying the above principles, obviously the claims of the petitioner to a higher position on the seniority list and to an earlier promotion predicated on the claim for earlier promotion to the post of Deputy Engineer, are belated and unsustainable. The challenge to the seniority list is also relatable to the events that took place in 1978 and 1979 whereas the present petition was filed in 1990. In such circumstances, the prayers of the petitioner for deemed date of promotion or for quashing the appointment of respondent No.2 on the post of Executive Engineer finds no support either in facts or in law and the grievances voiced by the petitioner are also suffering from the vices of delay and laches.

6. In the facts and for the reasons discussed hereinabove, the petition is dismissed. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)